

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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[www.montgomerycountymd.gov/content/council/boa/index.asp](http://www.montgomerycountymd.gov/content/council/boa/index.asp)

**Case No. A-6280**

**PETITION OF LINDA B. MILLER AND YAGUANG XU**

(Hearing held February 11, 2009)

**OPINION OF THE BOARD**

(Effective date of Opinion, March 13, 2009)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.535. The petitioners propose the construction of a one-story addition/garage that requires a seven (7) foot variance as it is within three (3) feet of the side lot line. The required side lot line setback is ten (10) feet.

Martin Hutt, Esquire, represented Suong and Michael Szafranski, adjoining neighbors, at 9824 Wilden Lane [Lot 14], at the public hearing.

The subject property is Lot 15, Block C, Bedfordshire Subdivision, located at 9820 Wilden Lane, Potomac, Maryland, 20854, in the R-200 Zone (Tax Account No. 01432980).

Decision of the Board: Requested variances **denied**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioners propose the construction of a 23.3 x 7.4 foot one-story addition/garage.
2. Ms. Miller testified that she has resided in her home since 1980 and that two-car garages are a standard for most homes in the neighborhood. Ms. Miller testified that there are two homes on the Wilden Lane cul-de-sac/circle that are pie-shaped and that for this reason have only single-car garages. Ms. Miller testified that her former neighbor at 9824 Wilden Lane [Lot 14] applied for and received variances for his property and her property to construct a two-car garage. Ms. Miller testified that the former neighbor built his garage, but she did not exercise her variance. Ms. Miller testified that she is selling

her home and would like to reactivate the variance petition. See Exhibit Nos. 4 [site plan], 7 [BOA opinion dated 11/16/88], 9 [zoning vicinity map].

3. Ms. Miller testified that the addition will reduce cars on the street because the neighborhood has no sidewalks, which makes it particularly hazardous for the children of neighborhood who walk to school. Ms. Miller testified that the biggest crime problem in her neighborhood last year was car theft and that cars are safer when garaged at night. Ms. Miller testified that she was the owner of the property at the time of filing for the variance, but that house has gone to settlement and that Mr. and Mrs. Xu are the current owners. Ms. Miller testified that the subject property is uniquely shaped. Ms. Miller testified that her lot is identical in size to Lot 14, but slightly smaller than other lots in the neighborhood. The subject property is 10,824 square feet.
4. Mr. Hutt put forth a motion to dismiss the variance request for failure to meet the requirements of the zoning ordinance. Mr. Hutt stated that the neighborhood has a number of lots that front on cul-de-sacs or quasi cul-de-sacs and that the lots that front on the cul-de-sacs are shallower at the front property lines than at the rear property lines. Mr. Hutt stated that the subject property is not materially impacted by the cul-de-sac at its front property line. Mr. Hutt stated that neighborhoods that have two-car garages do not create an unusual circumstance and that neighborhoods that lack sidewalks are not unique to the County. Mr. Hutt stated that the subject property could accommodate new construction without the need for variance. See Exhibit No. 13 [composite tax map].
5. Mr. Szafranski testified that his is family has resided in the home since 2003 and that he believes the proposed addition will negatively impact the use and enjoyment of his home.
6. Ms. Xu testified that the front of the subject property is very narrow and that the proposed construction will provide parking for the entire family. Ms. Xu testified that the existing garage would not be demolished, but that the existing structure would be extended. Mr. Xu testified that the proposed construction will not negatively impact the neighbors use and enjoyment of their property.

### **FINDINGS OF THE BOARD**

Based upon the petitioners' binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations*

*would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the petitioners' lot has no exceptional topographical or other conditions peculiar to the subject property. The Board finds that while the shape of the petitioners' lot is distinctive, this shape is shared with other lots in the petitioners' subdivision. Additionally, the Board finds that cul-de-sacs are characteristic of the County and the petitioners' neighborhood. The Board notes that for purposes of evaluation for the grant of a variance that "the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property." (*Umerley v. People's Counsel*, 108 Md. App. 497, 506 (1996) citing *North v. St. Mary's County*, 99 Md. App. 502, 514 (1994)).

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of seven (7) feet from the required the (10) foot side lot line setback for the construction of one-story addition/garage is denied.

The Board adopted the following Resolution:

On a motion by David K. Perdue, seconded by Carolyn J. Shawaker, with Walter S. Booth, Stanley B. Boyd and Catherine G. Titus, Chairman, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

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Catherine G. Titus  
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing  
Opinion was officially entered in the  
Opinion Book of the County Board of  
Appeals this 13th day of March, 2009.

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Katherine Freeman  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have the right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.